

**Date: 20090320**

**Docket: IMM-3594-08**

**Citation: 2009 FC 295**

**Ottawa, Ontario, March 20, 2009**

**PRESENT: The Honourable Madam Justice Dawson**

**BETWEEN:**

**RAVEENDRAN KANAGARATNAM**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] Mr. Kanagaratnam is a permanent resident of Canada. On June 5, 2006, he was found to be inadmissible on grounds of serious criminality after he was convicted of the offences of assault with a weapon, forcible confinement and assault causing bodily harm. At the conclusion of the admissibility hearing, a deportation order was issued.

[2] Mr. Kanagaratnam appealed to the Immigration Appeal Division of the Immigration and Refugee Board (IAD). While he did not challenge the validity of the deportation order, he asked

that his appeal be allowed, or that the deportation order be stayed, on humanitarian and compassionate grounds. The IAD dismissed Mr. Kanagaratnam's appeal. This is an application for judicial review of that decision.

[3] During oral argument, counsel for Mr. Kanagaratnam agreed that this application turns on one issue: did the IAD commit an error of law in the exercise of its discretion by failing to consider all of the relevant factors when refusing to allow the appeal or to stay the deportation order? It is agreed that this is an issue reviewable on the standard of correctness. See: *Ivanov v. Canada (Minister of Citizenship and Immigration)*, [2007] 2 F.C.R. 384 at paragraph 19 (F.C.); aff'd [2008] 2 F.C.R. 502 (F.C.A.).

[4] In the exercise of its discretion whether to allow an appeal, or to stay a deportation order, the IAD must have regard to "all [of] the circumstances of the case." See: paragraph 67(1)(c) and subsection 68(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27. In *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 84, the Supreme Court of Canada confirmed that the circumstances to be considered are those referred to as the "Ribic factors." For the purpose of this application, the relevant factor is the "possibility of rehabilitation." Mr. Kanagaratnam argues that the IAD erred in law by requiring him to prove not the "possibility of rehabilitation" but, rather, the fact of rehabilitation. If this is what the IAD did, it would be an error of law. See, for example, *Martinez-Soto v. Canada (Minister of Citizenship and Immigration)*, [2008] F.C.J. No. 1101 (F.C.).

### **The decision of the IAD**

[5] Before turning to the asserted error, it is important to note that a central feature of the decision of the IAD was its finding that Mr. Kanagaratnam was not a credible witness. No attack is made upon that finding.

[6] The IAD listed a number of instances where concerns arose with respect to Mr. Kanagaratnam's testimony. Of particular relevance to the issue of rehabilitation is the finding that Mr. Kanagaratnam was evasive about when he decided to accept responsibility for his criminal actions. Initially, Mr. Kanagaratnam testified that he decided to accept such responsibility after he was denied early parole in February of 2008. In this regard, the report of the Ontario Parole and Earned Release Board that denied Mr. Kanagaratnam's early parole noted that "your continued denial stops you from seeking out treatment for your violent action which seem[s] out of control. [...] This board finds that until you come to understand your actions and triggers you can not be safely managed in the community." Later, Mr. Kanagaratnam testified that he in fact had recognized that he had an anger management problem when he was out on bail pending the appeal of his conviction. The reason he gave for not seeking counselling or a program to deal with his anger management at that time was that he was told he could later take these courses for free while in jail.

[7] Turning now to the impugned portion of the IAD's decision, its comments about rehabilitation, or the possibility of rehabilitation, are found at paragraphs 20 and 21 of its reasons.

There it wrote:

The indicia of rehabilitation include "credible expressions of remorse, articulation of genuine understanding as to the nature and consequences of criminal behaviour and demonstrable efforts to address the factors that give rise to such behaviour."

As noted, the appellant's expression of remorse is recent and he has yet to undergo any counseling to help him deal with whatever underlying problems he may have. He testified that he intends to seek counseling and will work with his probation officer to identify appropriate resources. Given my concerns with respect to his credibility and the obvious self-serving nature of his statement that he now accepts responsibility for his actions, the appellant was not able [to] establish that he is rehabilitated. At this point in time there has been no demonstrable effort to determine what factors gave rise to his behaviour, let alone any concrete action to address his behaviour.

**Did the IAD error as alleged?**

[8] I agree that the reasons of the IAD are not a model of clarity on this point, and that the IAD unfortunately stated that "the appellant was not able [to] establish that he is rehabilitated."

[9] Notwithstanding, the IAD's reasons are not to be read microscopically. For the following reasons, I find that the IAD did not err as alleged.

[10] First, at an earlier point in its reasons, the IAD set out the correct legal test, namely "the possibility of rehabilitation."

[11] Second, the impugned paragraphs appear under the heading "The Possibility of Rehabilitation."

[12] Third, at the commencement of the hearing the IAD refused Mr. Kanagaratnam's request that the hearing be adjourned. One of the grounds advanced was so that Mr. Kanagaratnam would

have time to enroll in potential counselling or anger management courses. In refusing the adjournment for this purpose, the IAD stated:

And as for his enrolment in potential counselling or anger management courses in the near future, I note that the conviction that resulted in s. 36(1)(a) inadmissibility finding was dated March 30<sup>th</sup>, 2005. The Appellant has had ample opportunity to enrol in counselling or anger management programs since that date, and the fact that he may be doing so in the near future can certainly be a factor that can be dealt with at the hearing as we proceed today. [emphasis added]

[13] By stating that evidence could be led about future involvement in counselling or programs, the IAD recognized that evidence as to the potential for rehabilitation was relevant. This evidence would not be relevant to the issue of whether Mr. Kanagaratnam was rehabilitated at the time of the hearing.

[14] Finally, in one of the concluding paragraphs of its reasons where the IAD summarized its conclusions, it referred to "the appellant's failure to demonstrate any concrete efforts to rehabilitate himself". [emphasis added] Again, I believe this shows that the IAD was considering the potential for rehabilitation.

[15] I repeat that the decision of the IAD could have been clearer on this point. I am satisfied, however, that the IAD took into account its concerns about Mr. Kanagaratnam's credibility, together with the lack of any credible evidence of concrete action to address the matters that led to Mr. Kanagaratnam's criminal behavior. On that basis, it concluded that Mr. Kanagaratnam had failed to establish the possibility of his rehabilitation.

**Conclusion**

[16] For these reasons, the application for judicial review will be dismissed. Counsel posed no question for certification, and I agree that no question arises on this record.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. The application for judicial review is dismissed.

“Eleanor R. Dawson”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-3594-08

**STYLE OF CAUSE:** RAVEENDRAN KANAGARATNAM, Applicant

and

THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION, Respondent

**PLACE OF HEARING:** HALIFAX, NOVA SCOTIA

**DATE OF HEARING:** MARCH 11, 2009

**REASONS FOR JUDGMENT  
AND JUDGMENT:** DAWSON, J.

**DATED:** MARCH 20, 2009

**APPEARANCES:**

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